

ATTORNEY DOCKET NO. 14028.0284U2
Application No. 09/810,999

Remarks

Claims 1, 2, 4-8, 10, 12, and 13 are pending in this application. Claim 3 is withdrawn from consideration as drawn to a non-elected species. Claims 5-7 have been canceled. Thus, claims 1, 2, 4, 8, 10, 12, and 13 are under consideration. Claims 1 and 8 have been amended herein. Support for claim 1 as amended can be found at least in original claims 1 and 5-7. Support for claim 8 as written can be found at least in original claim 8. Applicants have amended claim 1 to recite the limitations of original claims 5-8. Claim 8 has been amended merely to correct dependency changes as a result of the amendment of claim 1 and cancellation of claims 5-7. Thus no new matter has been added.

35 U.S.C. § 103

Claims 1, 2, 4-8, 10, 12, and 13 are rejected under 35 U.S.C. § 103 (a) as allegedly being obvious over U.S. Patent No. 6,103,235 (the '235 patent). Applicants respectfully traverse this rejection. The present application claims priority to U.S. Serial No. 60/008,104. The '235 patent also claims priority to U.S. Serial No. 60/008,104. Thus, the present application and the '235 patent have the same priority date and the '235 patent cannot render obvious the present invention. In light of these facts, the present basis for rejection does not have merit, and its withdrawal is respectfully requested.

Claims 1, 2, 4-8, 10, 12, and 13 are rejected under 35 U.S.C. § 103 (a) as allegedly being obvious over WO 96/32137 in view of Henretta et al. (*Transplantation Proceedings* (1994) 26: 1138-1139). Applicants respectfully traverse this rejection. The present application claims priority to PCT/US96/05087, which published as WO96/32137. Thus the WO96/32137 publication is not prior art and cannot render obvious the present invention. Applicants request withdrawal of the rejection, as the remaining cited references fails to teach each element of the claimed invention.

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U.S.C. § 112, first paragraph

Claims 1, 2, 4, 10, 12, and 13 are rejected under 35 U.S.C. § 112, ¶ 1, for allegedly lacking enablement such that a person skilled in the art can practice the invention. In particular, the Examiner has rejected claims 1, 2, 4, 10, 12, and 13 for allegedly failing to teach one skilled in the art how to reduce the number of T-cells using any immunotoxin. Applicants have amended claim 1 to incorporate the limitations of original claim 5. Thus, applicants have amended claim 1 to recite, "administering to the diabetic subject an anti-CD3-diphtheria toxin immunotoxin, thereby reducing the subject's T-cell population." Support for this amendment can be found at least in original claims 1 and 5-7. Applicants note that claim 1 as currently amended merely claims the genus of what the Examiner has already conceded, that is, that UCHT1-CRM9 (an anti-CD3-diphtheria toxin immunotoxin) has been enabled. By this amendment applicants believe this objection has been overcome and respectfully request its withdrawal.

Pursuant to the above amendments and remarks, reconsideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issue.

Payment in the amount of \$410.00 for Request for a Two Month Extension of Time is to be charged to a credit card and such payment is authorized by the signed, enclosed document entitled: Credit Card Payment Form PTO-2038. It is believed that no additional fee is required with this submission. However, should a fee be required, the Commissioner is hereby authorized to charge any additional amount or credit any overpayment to Deposit Account No. 14-0629.

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Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence and any items indicated as attached or included are being transmitted via facsimile transmission to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Attention: Examiner Gerald R. Ewoldt, Art Unit 1642, (703) 305-3014, on the date indicated below.


Tina Williams McKeon

September 30, 2003
Date